

DEPARTMENT OF NATURAL RESOURCES

DIRECTOR'S ANNUAL REPORT: 2011

IC 4-22-2-28.1(k)

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Director, Department of Natural Resources
Secretary, Natural Resources Commission
October 4, 2011

Forwarded to:
Legislative Council
Indiana Economic Development Corporation

ANNUAL REPORT

IC 4-22-2-28.1(k)

TITLE 312 NATURAL RESOURCES COMMISSION

IC 4-22-2-28.1(k) Responses

IC 4-22-2-28.1(k) Responses

The number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved

ARTICLE 1. DEFINITIONS

LSA Document #08-286(F)

The small business regulatory coordinator received ten questions.

LSA Document #07-111(F)

Questions were received regarding definitions associated with riparian rights, public freshwater lakes, and navigable waters. It is unknown whether the inquiries were made by small businesses.

ARTICLE 2. PROCEDURES AND DELEGATIONS

LSA Document #08-52(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-986(F)

Bond Increase: Several organizers of fishing tournaments attended a public hearing and voiced concern on the bond increase proposed rule amendment. Also at the public hearing, comments were made favorably by organizers to the new rule changes, especially the ability to add boats.

ARTICLE 3. ADJUDICATORY PROCEEDINGS

LSA Document 10-162(F)

The small business regulatory coordinator received two questions.

LSA Document #08-688(F)

The small business regulatory coordinator received two questions.

LSA Document #08-52(F)

The Natural Resources Commission, Division of Hearings receives calls during the fiscal year from persons asking for information regarding administrative procedures in adjudicatory proceedings, such as: (1) Questions regarding filing and service procedures; (2) Questions regarding application of the "Trial Rules" (not typically using that term, but that's what questions amount to); (3) Questions regarding responsibility for identifying affirmative defenses (most often "adverse possession" or "prescriptive easement"); and (4) Other questions regarding 312 IAC 3-1. The Natural Resources Commission, Division of Hearings, receives approximately three calls per week (156 per year) from persons requesting information regarding the four subject matter listed. However, it is unknown whether the inquiries were made by small businesses.

ARTICLE 4. LAW ENFORCEMENT

LSA Document #07-145(F)

The small business regulatory coordinator did not file a report.

ARTICLE 5. BOATING ON PUBLIC WATERS OF INDIANA

LSA Document #09-210(F)

The small business regulatory coordinator did not file a report.

LSA Document #08-775(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-295(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-756(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-57(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 6. NAVIGABLE WATERS

LSA Document #09-152(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-137(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-614(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 6.2. GREAT LAKES BASIN WATER MANAGEMENT

LSA Document #08-531(F)

The small business regulatory coordinator received four questions.

ARTICLE 6.3. WATER WITHDRAWAL CONTRACTS FROM STATE RESERVOIRS

LSA Document #08-131(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 6.5. OFF-ROAD VEHICLES AND SNOWMOBILES

LSA Document #10-51(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 7. TRAILS AND SCENIC RIVERS

LSA Document #09-153(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 8. PUBLIC USE OF NATURAL AND RECREATIONAL AREAS

LSA Document #10-566(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #10-37(F)

No report was filed by the small business regulatory coordinator.

LSA Document #09-470(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 9. FISH AND WILDLIFE

LSA Document #10-501(F)

Three questions were asked.

LSA Document #10-418(F)

The small business regulatory coordinator received one question.

LSA Document #10-230(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #10-104(F)

312 IAC 9-3-18.5: Nine questions, with one relating to the hunting of wild hogs.

LSA Document #09-986(F)

Bond Increase: Several organizers of fishing tournaments attended a [public] hearing and voiced concern on the bond increase proposal.

Rules Amendment: At the rules amendment [public] hearing, comments were made favorably by organizers to the new rule changes, especially the ability to add boats.

LSA Document #09-984(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-616(F)

The small business regulatory coordinator received three comments or questions.

LSA Document #09-486(F)

The small business regulatory coordinator received 25 comments, questions or complaints.

LSA Document #09-479(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-80(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-60(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-44(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-886(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-740(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #08-672(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 10. FLOOD PLAIN MANAGEMENT**LSA Document #08-72(F)**

The small business regulatory coordinator did not receive any comments, complaints, or questions from small businesses regarding this rule.

ARTICLE 10.5. REGULATION OF DAMS**LSA Document #06-92(F)**

No comments, complaints, and questions were received regarding the rule from small businesses, by the Small Business Regulatory Coordinator (SBRC) for LSA Document #06-92(F) in the most recent State fiscal year ending in June of 2011.

Typical program focused comments, complaints, and questions routinely received are regarding the larger subject matter of dam safety, owner financial assistance, population at risk and the State's dam safety statute IC 14-27-7.5. They can be categorized into twelve groups.

- Individuals living in the potential failure flood inundation areas below dams, seeking answers about the safety of the dams that put them at risk and the actions of the dam owners (or lack thereof) to correct deficiencies.
- Outrage from people that bought property around a manmade lake or downstream of dam and were not told by the seller or real estate professional that there are serious safety deficiencies with the dam.
- Concerned citizens wanting the Department to take more enforcement action to make the dam owner improve the dam to a safer condition.
- Questions from reporters seeking to follow up on State efforts to require dam owners to repair or rehabilitate dams damaged during the major 2008 flood events throughout Indiana.
- Engineering firms asking technical questions in either an attempt to learn how to design safe dams, or to understand the concepts of inspecting dams.
- Engineering firms with experience in dam safety engineering seeking to coordinate technical issue review prior to finalizing new dam, or existing dam rehabilitation designs.
- Owners of dams who don't understand why the statute holds them responsible for the safety, high hazard dam inspection, maintenance, operation, and repair of their structures.
- Owners of dams seeking State or Federal financial assistance for the performance of high hazard dam inspections, maintenance, operation, and this year particularly because of the extensive damage to privately owned dams caused by the June 2008 floods in the southern part of the State, questions from owners seeking financial assistance for the repair / rehabilitation of their structures.
- Owners of dams seeking free technical guidance on creating or modifying their dam so as to avoid State jurisdiction.

- Owners of dams seeking free technical / engineering analysis and guidance during either times of emergency conditions at their dams, or when deficiencies have grown to the point that structural rehabilitation is required.
- Questions from owners seeking to give their damaged or failed dams to the State.
- Emergency response agencies seeking on site assessments, technical analysis, and guidance during times of emergency conditions at dams.

ARTICLE 11. LAKE CONSTRUCTION ACTIVITIES

LSA Document #09-856(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #09-806(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #07-646(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #07-467(F)

The small business regulatory coordinator received five questions.

LSA Document #06-605(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 11.5 SURFACE WATER EMERGENCIES ON LAKES

LSA Document #09-876(F)

The Division of Water received approximately 12 inquiries regarding the provisions of 312 IAC 11.5 during the past fiscal year. None of the inquiries were believed to have been made by small businesses.

ARTICLE 12. WATER WELL DRILLING AND GROUND WATER

LSA Document #05-341(F)

The Division of Water received approximately 250 inquiries from small businesses regarding the provisions of 312 IAC 12 during the past fiscal year.

ARTICLE 13. WATER WELL DRILLERS

LSA Document # 11-2(F)

The Division of Water received approximately 250 inquiries from small businesses regarding the provisions of 312 IAC 13 during the past fiscal year.

ARTICLE 14. TIMBER BUYERS, THEIR AGENTS, AND TIMBER GROWERS

LSA Document #09-154(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 15. TIMBER MANAGEMENT

LSA Document #09-155(F)

The small business regulatory coordinator did not receive any comments, complaints or questions.

ARTICLE 16. OIL AND GAS

LSA Document #10-33(F)

The small business regulatory coordinator did not receive any comments, complaints or questions.

ARTICLE 17. OTHER PETROLEUM REGULATION

LSA Document #10-38(F)

The small business regulatory coordinator did not receive any comments, complaints or questions.

ARTICLE 18. ENTOMOLOGY AND PLANT PATHOLOGY

LSA Document #09-85(F)

Several small businesses a week contact the division to request compliance agreements to ensure compliance with the current rule. Members of the public (approximately 10 per week) contact the division during the months of April through October with questions about the current quarantine and their ability to move regulated materials throughout the state of Indiana.

LSA Document #08-413(F)

Several small businesses a week contact the division to request compliance agreements to ensure compliance with the current rule. Members of the public (approximately 10 per week) contact the division during the months of April through October with questions about the current quarantine and their ability to move regulated materials throughout the state of Indiana.

LSA Document #08-76(F)

The small business regulatory coordinator did not receive any comments, complaints or questions were received.

ARTICLE 19. RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS

LSA Document #10-60(F)

Approximately 34 questions/comments regarding reporting issues are received and processed by this office this year for all matters regarding the business of the ginseng trade. 25 were requests for a dealer list by small businesses exporting ginseng from the US or by harvesters. There were 8 general requests for dealer information and 1 for harvesting information.

In November 2010, each small business owner was afforded opportunity to provide individual comments regarding law and rule regulating ginseng in face to face or telephone interview. 21 of the 29 made comments that have led to several proposed changes in law and 3 specific changes in the rule that are currently in process.

ARTICLE 20. HISTORIC PRESERVATION REVIEW BOARD

LSA Document #10-42(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #07-140(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 21. ARCHAEOLOGICAL REVIEW AND RECOVER

LSA Document #07-184(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 22. HUMAN REMAINS, BURIAL OBJECTS, AND ARTIFACTS

LSA Document #10-59(F)

The small business regulatory coordinator did not receive any comments, complaints or questions.

LSA Document #07-192(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 22.5. CEMETERIES AND BURIAL GROUNDS; REGISTRATION AND MANAGEMENT

LSA Document #08-534(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 24. STATE MUSEUMS AND HISTORIC SITES

LSA Document #09-156(F)

Public Law 167-2011 repealed IC 14-20-1 which established Museums and Historic Sites as an entity within the Department of Natural Resources. The former statute also provided for guidance to the DNR and the Commission through a Museum Board of Trustees. P.L. 167 established a new Indiana State Museum and Historic Sites Corporation (the "ISMHS Corporation"), which is a "public body corporate and politic" and an "instrumentality of the state". Repeal of 312 IAC 24 is recommended to implementing P.L. 167.

ARTICLE 25. COAL MINING AND RECLAMATION OPERATIONS

LSA Document #10-547(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

LSA Document #07-146(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 26. GRANT PROGRAMS

LSA Document #10-161(F)

The small business regulatory coordinator did not receive any comments, questions or complaints.

ARTICLE 27. FLOOD CONTROL REVOLVING FUND

LSA Document #09-199(F)

The Flood Control Revolving Fund was created by IC 14-28-5 in the 1950s, and intended to encourage local initiatives to solve local flooding and water resource problems. By statute, this Fund provides only to local units of government low interest loans to help finance relevant local flood control programs. By statute, this loan program can only be obtained by entities falling under the definition of *local unit* as set forth by IC 14-28-5-4. Local unit is defined as county, city, town, or special taxing district created by law such as a conservancy district. Therefore, this loan program is not available to small businesses.

No comments, complaints, and questions were received regarding the rule from small businesses, by the Small Business Regulatory Coordinator (SBRC) for LSA Document #09-199(F).

The number of complaints or questions reported that were resolved to the satisfaction of the agency and the small businesses involved.

ARTICLE 1. DEFINITIONS

LSA Document #08-286(F)

The meaning of “lake” arises in many regulatory and proprietary contexts. Having a rule definition, within a statutory structure, helps achieve resolutions. Experience with the definition seems generally to have been positive because the definition is measured and resolves ambiguities. Application of the definition to disputes between competing riparian owners may generate “winners and losers”. The winner is more likely than the loser to be satisfied with the result.

LSA Document #07-111(F)

It is believed that the questions received regarding definitions associated with riparian rights, public freshwater lakes, and navigable waters were answered to the satisfaction of the inquirer and agency; however, it is unknown whether the questions were posed by small business.

ARTICLE 2. PROCEDURES AND DELEGATIONS

LSA Document #09-986(F)

Agency withdrew the proposal to raise the bond limit from \$150 to \$300.

ARTICLE 3. ADJUDICATORY PROCEEDINGS

LSA Document 10-162(F)

Inquiries were received from law firms concerning the rules, and the underlying legislation, for a code of judicial conduct for OEA and NRC ALJs. The reasons for the inquiries were not disclosed, and there was no follow up.

LSA Document #08-688(F)

Inquiries were received from law firms concerning the possibility of coordinating the dispositions of enforcement actions by IDEM and the DNR. In neither instance did the law firms elect to pursue the possible remedy, although in at least one instance, a suggestion was made that the remedy helped achieve IDEM cooperation.

LSA Document #08-52(F)

It is believed that the questions received regarding adjudicatory proceedings were answered to the satisfaction of the inquirer and agency; however, it is unknown whether the questions were posed by small business.

ARTICLE 6.2. GREAT LAKES BASIN WATER MANAGEMENT**LSA Document #08-531(F)**

Management of water usage in Indiana's Great Lakes Basin is sure to generate conflicts as the Great Lakes Compact is implemented. The incipient rule does little more than identify the DNR's Division of Water as the point of contact. The inquiries were satisfactorily addressed, if only because the imposition of regulation had not yet begun.

ARTICLE 9. FISH AND WILDLIFE**LSA Document #10-501(F)**

One question was answered. The agency did not support the changes requested by the other two small businesses.

LSA Document #10-418(F)

One question was answered.

LSA Document #10-104(F)

All nine questions were answered.

LSA Document #09-986(F)

Bond Increase: Agency withdrew the proposal to raise the bond limit from \$150 to \$300.

LSA Document #09-616(F)

One question was answered to the satisfaction of the agency and the inquirer. The other two inquiries were resolved by the filing of two petitions with the Natural Resources Commission for rule changes.

LSA Document #09-486(F)

All 25 comments, questions, or complaints were resolved to the satisfaction of the DNR and businesses involved.

ARTICLE 11. LAKE CONSTRUCTION ACTIVITIES**LSA Document #07-467(F)**

Common use of piers is a solution that would probably be used only in the most extreme circumstances of overcrowding. The solution may be most valuable because interested persons learn the agency has an option for a seemingly insoluble conflict, and they are then encouraged to reach a private agreement that does not require common usage. The complaint is not with the remedy but with the circumstance of over-crowding.

ARTICLE 11.5 SURFACE WATER EMERGENCIES ON LAKES**LSA Document #09-876(F)**

All complaints and questions reported to the Division of Water during the past fiscal year with regard to the provisions of 312 IAC 11.5 are believed to have been resolved to the satisfaction of the Division and the inquiring parties.

ARTICLE 12. WATER WELL DRILLING AND GROUND WATER

LSA Document #05-341(F)

All complaints and questions reported to the Division of Water during the past fiscal year with regard to the provisions of 312 IAC 13 are believed to have been resolved to the satisfaction of the Division and the small businesses involved.

ARTICLE 13. WATER WELL DRILLERS

LSA Document # 11-2(F)

All complaints and questions reported to the Division of Water during the past fiscal year with regard to the provisions of 312 IAC 13 were believed to have been resolved to the satisfaction of the Division and the small businesses involved.

ARTICLE 18. ENTOMOLOGY AND PLANT PATHOLOGY

LSA Document #08-413(F)

All questions are answered to the satisfaction of the agency and small business or members of the public in a timely manner.

LSA Document #09-85(F)

All questions are answered to the satisfaction of the agency and small business or members of the public in a timely manner.

ARTICLE 19. RESEARCH, COLLECTION, QUOTAS, AND SALES OF PLANTS

LSA Document #10-60(F)

I received one complaint that the entire rule be nearly re-written to the benefit of business without regard to current best management practices that assure continued sustainability of harvests as defined by USFWS, ongoing scientific research, and the American Herbal Products Association. All other communications reached an amicable conclusion.

The total number of staff serving as coordinators under this section during the most recent state fiscal year

There were 21 staff members serving as coordinators for a total of 64 rules under IC 4-22-2-28.1 during the State fiscal year 2010-2011.

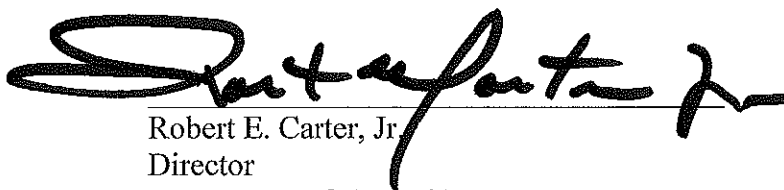
The agency's costs in complying with this section during the most recent state fiscal year

Total cost reported by the small business regulatory coordinators in the fiscal year 2010–2011 is \$13,489.75.

The projected budget required by the agency to comply with this section during the current state fiscal year

The projected budget required by the agency to comply with this section during the current 2011-2012 state fiscal year is \$13,894.44.

DATE: October 7, 2011


Robert E. Carter, Jr.
Director
Department of Natural Resources

(Final rules filed during 2010 – 2011 Fiscal Year)

LSA Document #11-2(F)
LSA Document #10-566(F)
LSA Document #10-547(F)
LSA Document #10-501(F)
LSA Document #10-418(F)
LSA Document #10-230(F)
LSA Document #10-162(F)
LSA Document #10-104(F)
LSA Document #10-59(F)
LSA Document #10-42(F)
LSA Document #09-986(F)
LSA Document #09-984(F)
LSA Document #09-876(F)
LSA Document #09-856(F)
LSA Document #09-806(F)
LSA Document #09-616(F)

(Final rules filed during 2009 – 2010 Fiscal Year)

LSA Document #10-161(F)
LSA Document #10-60(F)
LSA Document #10-51(F)
LSA Document #10-38(F)
LSA Document #10-37(F)
LSA Document #10-33(F)
LSA Document #09-486(F)
LSA Document #09-479(F)
LSA Document #09-470(F)
LSA Document #09-210(F)
LSA Document #09-199 (F)
LSA Document #09-152 (F)
LSA Document #09-137(F)
LSA Document #09-85(F)
LSA Document #09-80(F)
LSA Document #09-60(F)
LSA Document #09-44(F)
LSA Document #08-886(F)

(Final rules reported, and filed during 2008 – 2009 Fiscal Year)

LSA Document #09-155(F)
LSA Document #09-154(F)
LSA Document #09-153(F)
LSA Document #08-775(F)
LSA Document #08-756(F)
LSA Document #08-740(F)
LSA Document #08-688(F)
LSA Document #08-672(F)
LSA Document #08-614(F)

LSA Document #08-534(F)
LSA Document #08-531(F)
LSA Document #08-413(F)
LSA Document #08-295(F)
LSA Document #08-286(F)
LSA Document #08-131(F)
LSA Document #08-76(F)
LSA Document #08-72(F)
LSA Document #08-52(F)

(Final Rules reported, filed during 2007 – 2008 Fiscal Year)

LSA Document #08-57(F)
LSA Document #07-646(F)
LSA Document #07-467(F)
LSA Document #07-192(F)
LSA Document #07-184(F)
LSA Document #06-605(F)

(Final Rules reported, filed during 2006 – 2007 Fiscal Year)

LSA Document #07-146(F)
LSA Document #07-145(F)
LSA Document #07-140(F)
LSA Document #07-111(F)
LSA Document #06-92(F)
LSA Document #05-341(F)